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REMARKS

Reconsideration of the application as amended is requested.

Applicant notes with appreciation the Examiner's indication that claim 71 is allowed, and that claim 90 contains allowable subject matter. Claim 90 has been rewritten independent form, including all of the limitations of the base claim and intervening claim 89. Claim 90 is also, therefore, believed to be in condition for allowance, and a notice to this effect is earnestly solicited.

In the Office Action dated October 2, 2009, claims 72, 75-83, 89 and 91-107 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Heinecke et al. US Patent No. 5,738,642 in view of Heinecke et al. US Patent No. 6,436,432; claims 73-74 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Heinecke et al. `642 in view of Dozier et al. US Patent No. 7,135,606; claims 84-88 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Heinecke `642 and `432 and further in view of Dozier et al. `606.

In a telephone conference with the Examiner Brandon Jackson on September 28, 2009, the undersigned attorney discussed the prior art and potential claim amendments. According to the undersigned attorney's recollection, the Examiner suggested amending at least some of the claims to further define the peripheral edge of the handle, such that the claims explicitly recite that the peripheral edge encompasses the entire outer edge of the handle. This suggestion is believed to have been a general suggestion, but this was not believed to be a specific indication that one or more of the claims would necessarily be allowable if amended in accordance with this suggestion.

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Independent claim 72 has been amended to recite that the handle defines an outer peripheral edge “extending around substantially the entire handle.” At page 4, the Office Action of October 2, 2009, states that “the plurality of openings (230, 232, 234, 326) do not contact the peripheral edge of the handle *when the peripheral edge of the handle is defined as the region furthest to the right of the handle*” (emphasis added). Heinecke `642 is not believed to disclose a handle defining an outer peripheral edge extending around substantially the entire handle, and wherein the continuity of contact between the handle and the polymeric film is interrupted by “a plurality of discreet openings in the handle defining edges that do not connect to the peripheral edge of the handle” as recited in the amended claim 72.

Furthermore, even if “the peripheral edge of the handle is defined as the region furthest to the right side of the handle” in Heinecke `432, it is not clear how the slits 230, 232, 234, and 236 of Heinecke `432 do not connect to a peripheral edge of the carrier frame 226 (Fig. 5) of Heinecke `432. Specifically, the cuts 230, 232, 234, and 236 of Heinecke `432 clearly do connect to two edges of carrier frame 226. If these two edges of Heinecke `432 are not inner and outer peripheral edges, these two edges would have to be something else. Applicant respectfully asserts that one skilled in the art would construe the two edges of the Heinecke `432 carrier frame 226 to be inner and outer peripheral edges. Restated, if the slits 230, 232, 234, and 236 of Heinecke `432 do not connect to an “outer peripheral edge”, what do they connect to? If claim 72 recited discreet openings that are connected to an outer peripheral edge of a handle, would the Examiner assert that Heinecke `432 does not disclose a discreet opening connected to an outer peripheral edge of the handle?

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Independent claim 75 specifically recites that the handle includes “a first cut through the handle connecting the outer edge of the handle to the inner edge”, and a plurality of second cuts that “are not connected to either the outer peripheral edge or to the inner edge”. The Office Action does not specify where Heinecke `642 or Heinecke `432 disclose a first cut as recited in claim 75, nor does the Office Action specify how the exact same edge portions of Heinecke `432 and/or Heinecke `642 can be construed to be both an outer peripheral edge and something other than a “outer peripheral edge” for purposes of claim 75. At pages 4-5, the Office Action states that “with respect to claims 75, 82, and 96, the Heinecke `642/Heinecke `432 device . . . the plurality of discrete opening [*sic*] (230, 232, 234, 236) do not contact the inner edge when the inner edge is defined as the portion of the inner circumference of the handle furthest to the right.” Applicant reiterates that claim 75 specifically recites “a first cut through the handle connecting the outer edge of the handle to the inner edge.” If the “inner edge” is “defined as a portion of the inner circumference of the handle furthest to the right” as suggested in the Office Action, the cut 250 of Heinecke `642 does not connect to this “inner edge”. Applicant respectfully asserts that it is highly unreasonable to assert that the slits 230, 232, 234, and 236 of Heinecke `432 and/or slit 250 of Heinecke `642 constitute both a first cut connecting inner and outer edges and yet also somehow constitute openings that do not connect to either the outer peripheral edge or the inner peripheral edge as recited in claim 75.

Furthermore, claim 75 recites “the handle being electrostatically adhered to the second side of the polymeric film without adhesive material” (emphasis added). In contrast, Heinecke `642 specifically teaches “a low adhesion coating 13 on a top face of backing 14; a carrier 170 [*sic*, should be “17”] attached to the top face of backing 14 over the low adhesion coating 13; a

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pressure-sensitive adhesive 16 on a bottom face of the backing 14” at column 7, lines 1-5. With respect to Fig. 10 at column 8, lines 11-12, Heinecke `642 states that “the backing 21 is likely to contact and [sic] the adhesive coated on the backing 214” (emphasis added). Thus, it is clear that adhesive 213 adheres frame 212 to backing 214. This is directly contrary to the arrangement of claim 75.

Applicant notes that “To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'” MPEP 2112(IV), citing *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)(quoting *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991))(emphasis added). At page 4, the Office Action states “The handle (212) comprises a conductive layer, which is the low adhesion coating”. However, the Office Action does not provide any support for the assertion that the low adhesion coating of Heinecke `642 is conductive, yet also not actually an adhesive as stated in Heinecke `642. The Office Action is purely speculative and directly contrary to the actual disclosure of Heinecke `642.

At page 4, the Office Action states “it is well known in the art that the polymer film can be attached to the paper handle by a mere electrostatic connection, *similar to the storage of transparent, polymer overhead sheets and paper being held together before use of transparent polymer sheet on an overhead machine*” (emphasis added). It is unclear to Applicant what is meant by “similar to . . . “. Is this referring to large rolls of material? What processing

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steps generate the static charge? Is the static charge sufficient in every case? If this is, in fact, “well known in the art,” the Examiner could easily cite a reference disclosing this. Even if electrostatic adhesion is known in another context, the actual teachings of Heinecke `642 and `432 (use of an adhesive) are directly contrary to the hypothetical modification, and it is highly unreasonable to assert that the “low adhesion coating” of Heinecke `642 is not actually an adhesive and that the “low adhesion coating of Heinecke `642 is conductive, which Heinecke `642 does not disclose.

Claims 76-89 and 91-94 depend from claim 75, and are, therefore, believed to be allowable for those reasons set forth above in connection with independent claim 75.

Independent claim 95 recites, among other features, a handle “including a first cut extending from the interior edge to the exterior edge to define ends that can be separated from one another upon removal of the handle from the polymeric film” (emphasis added). Claim 95 further recites a plurality of second cuts through the handle wherein first and second opposite ends of the second cuts “are spaced apart from the interior edge and from the exterior edge” (emphasis added). Restated, claim 95 recites a first cut that extends from an interior edge to an exterior edge, and second cuts with opposite ends that are spaced apart from the interior edge and from the exterior edge. At page 4, the Office Action states that “the plurality of openings (230, 232, 234, 236) do not contact the peripheral edge of the handle when the peripheral edge of the handle is defined as the region furthest to the right of the handle.” However, the Office Action does not state where Heinecke `642 or Heinecke `432 disclose a first cut “extending from the interior edge to the exterior edge” as recited in claim 95 “when the peripheral edge of the handle is defined as the region furthest to the right of the handle” as

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stated in the Office Action. If the slits 230, 232, 234, and 236 of Heinecke `432 are construed to be a “first cut extending from an interior edge to an exterior edge”, it is not reasonable to assert that these exact same slits (230, 232, 234, and 236) are also a plurality of second cuts with “first and second opposite ends” that are “spaced apart from the interior edge and from the exterior edge” as recited in independent claim 95. Applicant respectfully asserts that no combination of Heinecke `432 and `642 could possibly anticipate claim 95.

Claims 96-107 depend from claim 95 and are, therefore, believed to be allowable for those reasons set forth above in connection with independent claim 95.

With respect to independent claim 73, The Office Action states that “Heinecke fails to disclose a tab on the handle that projects into the window. Dozier teaches a dressing (10) comprising a handle (20) adhered (18) to a layer (14) with a tab (21) *projecting inward* (fig. 4)” (emphasis added). Claim 73 recites “the handle includes a tab *projecting into the window*” (emphasis added). Fig. 4 of Dozier `606 does not disclose a tab “projecting into the window” as recited in claim 73, and the Office action does not even assert that Dozier `606 discloses any such arrangement. This appears to be a tacit admission that Dozier `606 does not disclose “a tab projecting into the window”. Accordingly, no combination of Heinecke `642 and Dozier `606 could possibly anticipate independent claim 73.

Applicant notes that “a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP 2141.02, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Fig. 4 of Dozier `606 discloses a tab that is spaced apart from the remainder of the wound dressing 10. Given that the orientation of the tab 21 of Fig. 4 is inconsistent with the other figures and the written portion of Dozier `606, there is no reason to expect that the other aspects of the dressing of Fig. 4 are the same as the other figures and the written description. To the extent that the Office Action is suggesting that it would have been obvious to modify Fig. 4 of Dozier `606 to provide a tab that projects into a window, Applicant respectfully asserts that there would be no reason to modify Dozier `606 to provide such an arrangement. Specifically, all of the other figures of Dozier `606 show a tab 21 projecting outwardly, and the written specification of Dozier `606 does not describe the tab as projecting “into the window” as recited in claim 73. At column 2, lines 26-28, Dozier `606 states that “a specialized release sheet 20 overlies the adhesive coating 18 on the bottom surface 17 of the annular band 14 having an engagement tab 21 extending outwardly therefrom in planar relationship thereto” (emphasis added). To the extent that the Office Action is relying on the other figures and teachings in Dozier `606 for a teaching or suggestion to modify Fig. 4 of Dozier `606, all other portions of Dozier `606 teach an outwardly extending tab and, therefore, provide no support whatsoever for such modification.

Furthermore, claim 73 has been amended to recite that the polymeric film as “a central portion extending across the window” and that “the tab overlies the central portion of the polymeric film”. Neither Heinecke `642 nor Dozier `606 disclose any such arrangement, such that no combination of these references could possibly anticipate claim 73. Specifically, Fig. 4 of Dozier `606 teaches a tab that is spaced apart from the remainder of the wound dressing. If Fig. 4 of Dozier `606 were to be combined with Heinecke `642, the result would

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be a tab that is positioned well away from the remainder of the Heinecke `642 dressing. Dozier `606 would not be functional if the tab 21 of Dozier `606 were to extend inwardly. Specifically, as shown in Fig. 5 and described at col. 2, line 55-col.3, line 3, the wound dressing 10 of Dozier '606 is applied by first placing the wound dressing 10 over a wound "W", with the release sheet 20 positioned against a patient's skin "S". Dozier '606 states "With pressure being applied by the user to the wound dressing 10 to hold [sic] same in place, the user then grasps the tab 21 and pulls upwardly and trans-laterally in a spiral annular configuration severing the frangible perforation line 23 allowing the release sheet 20 to be pulled thereabout and outwardly from under the bottom surface 17 of the raised annular band portion 14 . . . Simultaneously exposing the adhesive coating 18 to the user's skin S there beneath floor adhesion." (col. 2, line 61 - col. 3, line 3). Clearly, it would be difficult, if not impossible, to grasp the tab 21 while the dressing 10 were positioned against the patient's skin S as shown in Fig. 5 if the tab 21 projected inwardly. Dozier '606 describes part number 16 as being "sterile absorbent material" (col. 2, lines 17-18). If the tab 21 did project inwardly, it would overlie the sterile pad 16, and a user would have to insert his/her finger between the tab 21 and the (previously) sterile pad 16 to grasp the tab 21.

Applicant notes that "it is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art" (emphasis added). *In re Wesslau*, 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965); see also *In re Mercier*, 515 F.2d 1161, 1165-66, 185 USPQ 774,778 (CCPA 1975). See also *Abbott Laboratories v. Sandoz, Inc.* 544 F.3d 1341

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(Fed. Cir. 2008) "In addressing the question of obviousness a judge must not pick and choose isolated elements from the prior art and combine them so as to yield the invention in question if such a combination would not have been obvious at the time of the invention.", citing *Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809, 106 S.Ct. 1578, 89 L.Ed.2d 817 (1986).

To the extent the Examiner is simply picking and choosing Fig. 4 of Dozier `606 to the exclusion of the other portions of Dozier `606, Applicant respectfully asserts that the Examiner must pick and choose the actual disclosure of Fig. 4 of Dozier `606, which shows a tab positioned apart from a wound dressing not a "tab projecting into the window" as recited in claim 73.

Applicant further notes that "to establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" MPEP 2112(IV), citing *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)(quoting *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991))(emphasis added).

There is no disclosure in Fig. 4 of Dozier `606 of a "tab projecting into the window" as recited in claim 73, and the missing descriptive matter is not "necessarily present".

Claim 74 depends from claim 73 and is, therefore, believed to be allowable for those reasons set forth above in connection with independent claim 73.


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Applicant made a concerted effort to place the present application in condition for allowance and a notice to this respect is respectfully solicited. In the event there are any remaining informalities, the courtesy of a telephone call to the undersigned attorney would be appreciated.

Respectfully submitted,

January 4, 2010

Date



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